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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 8, 2000

Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, SW, Room TW-A325
Washington, DC 20554

Re: CC Docket Nos. 96-98 and 99-68
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic

Dear Ms. Salas:

On December 7, 2000, Melissa Newman, Robert McKenna and I met with Kyle Dixon, legal advisor to Commissioner Michael Powell. During the meeting we discussed the items shown on the attached handout. The Qwest White Paper mentioned in the handout is also attached.

In accordance with Section 1.1206(b)(2) of the FCC's Rules, an original and two copies of this letter are being filed with your office for inclusion in the public record.

Acknowledgment and date of receipt of this submission are requested. A duplicate of this letter is provided for this purpose. Please call if you have any questions.

Sincerely,

John W. Kure

Attachments

cc: Kyle Dixon, Dorothy Attwood, Kathy Brown, Tamara Preiss, Adam Candeub, Rodney McDonald

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Reciprocal Compensation for ISP-Bound Traffic CC Dkt. Nos. 96-98 and 99-68

Ex parte

December 7, 2000

Melissa Newman, Robert McKenna and John Kure,

Qwest

The Commission must recognize and address the escalating problem of reciprocal compensation for ISP-bound traffic

ILECs are paying CLECs approximately $2.5 Billion for 2000 in reciprocal compensation payments.

Minutes in dial-up access to the Internet continue to grow (almost 50% per year) even with the migration to DSL and cable modem service.

> Even if per minute rates decline, ILECs will pay more money to CLECs in reciprocal compensation billings than we are now due to exponential growth in minutes, thus exacerbating the situation.

As a legal matter bill and keep is the appropriate compensation mechanism for ISP-bound traffic

The FCC has the authority and responsibility to establish reasonable interconnection rules among carriers.

The FCC correctly concluded in the Local Competition Order that traffic, which is not terminated in the local exchange, is not subject to section 251(b)(5). Thus, interexchange traffic is not subject to reciprocal compensation because the caller pays the long distance carrier, not the originating LEC, for the call. Thus, the originating LEC receives no revenue from the caller and must recover its costs for terminating the call from the IXC.

Internet dial-up traffic is akin to long distance traffic in that the caller pays the ISP, not the originating LEC, for the call. Under fundamental economic principles, the ILEC does not cause the CLEC to incur costs, rather the ISP and the end user. Thus, the LEC and CLEC involved should recover their costs from their own customers, i.e., the ISP and end user.

QWEST'S WHITE PAPER

Transition to bill and keep should be relatively short

An 18-month transition is sufficient to allow for the complete termination of reciprocal compensation payments.

CLECs have been notice for two years that reciprocal compensation payments for Internet dial-up traffic could end.

The financial markets have already discounted reciprocal compensation revenues to CLECs. A permissive solution is of no benefit because it continues the regulatory uncertainty surrounding reciprocal compensation.

New interconnection agreements negotiated by CLECs and ILECs should immediately go to bill and keep, unless the parties agree otherwise.

"Evergreen" clauses

During the transition the ratio caps should be low

A 12:1 ratio generally does nothing more than preserve the status quo of first year payments; it does not result in any reduction of payments.

Over 90% of the traffic exchanged between ILECs and CLECs is sent from the ILEC to the CLEC. Without a low ratio cap, CLECs will *continue* to have the incentive to target exclusively customers who terminate but do not originate traffic to reach the cap.

> Targeting customers in this fashion provides no "value add" to the telecommunications sector or to consumers.

State orders for bill and keep must be respected

Three Qwest states have ordered bill and keep for ISP-bound traffic largely on the basis that reciprocal compensation is an arbitrage opportunity for the CLECs that is unjust.

Arizona, Colorado, Iowa

It would be a step backward if the Commission created a situation, even during the transition, which would require these and other states who have appropriately ordered bill and keep to revisit that issue.

A Permissive Solution is Meaningless

Under the current "federal" regime, states are free to arbitrate reciprocal compensation decisions as they see fit. Based on press accounts, the draft order changes nothing. It is simply allowing the states to continue to do what they are already doing today. What is the point?

Actually, the draft order as we understand it makes the situation worse.

Several states have ordered bill and keep without a transition period. Does this draft order require a transition first before a state could order bill and keep?

Moreover, payments to CLECs could rise.

Transiting traffic is not subject to bill and keep

When a LEC hands the traffic from one LEC to another, there is no end user to bill, thus, under a bill and keep approach, the transiting carrier has no business relationship with the end user generating the traffic and would receive no payments for handing off traffic from either the end user or the originating carrier.

The Commission's rules must not preclude a transiting carrier from being compensated from the originating carrier.

A Legal Roadmap for Implementing A Bill and Keep Rule for All Wireline Traffic

Prepared by Qwest Communications International, Inc.

For Inclusion in CC Docket Numbers 96-98 and 99-68
Implementation of the Local Competition
Provisions of the Telecommunications Act of
1996: Inter-Carrier Compensation for
ISP-Bound Traffic

DATE 11-22-00

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EXECUTIVE SUMMARY

The Commission is continuing to struggle with the conundrum posed by what is called "ISP reciprocal compensation" — the massive diseconomies created when a CLEC serves a large number of Internet Service Providers and establishes a huge subsidizing revenue stream from a neighboring ILEC solely on account of one-way connections between the ILEC's customers and the Internet. While the Commission has been considering this issue for some time, its current deliberations are guided by the Court of Appeals decision in *Bell Atlantic*, in which an earlier Commission determination that ISP reciprocal compensation was not subject to the reciprocal compensation provisions of section 251(b)(5) of the Telecommunications Act was reversed for lack of sufficient reasoned decision making.

This paper examines the Commission's options in dealing with the ISP reciprocal compensation issue in light of *Bell Atlantic*. We have proposed legal arguments designed to support the economic and public policy analyses that document that the best method of treating inter-carrier compensation in the context of ISPs is what is called "bill and keep," where both carriers participating in a partnership to provide a connection between the ISP customer of one carrier and the end user customer of the other bear their own costs. As we demonstrate, there are various means of approaching a bill and keep regime in the wake of the *Bell Atlantic* decision. One legal quandary that we address is the fact that the Commission has suggested that section 252(d) of the Act permits mandatory bill and keep for local traffic *only* when traffic between two carriers is relatively in balance; thus, in the case of ISP reciprocal compensation, it would seem potentially anomalous to order bill and keep for the express reason that the traffic is so seriously out of balance as to create public policy dangers. Nevertheless, we conclude that proper analysis fully supports a regulatory structure in which ISP reciprocal compensation is handled via bill and keep, either alone or in conjunction with bill and keep for traffic more clearly identified as local in nature. Indeed, we suggest that this approach is possible even if the Commission does not revisit its rule concerning the need for traffic to be balanced, although it certainly may do so.

This paper presents two approaches which provide a legal foundation for a bill and keep regime for ISP and local traffic:

- ISP traffic can be treated as non-local in nature and not subject to the reciprocal compensation provisions of section 251(b)(5) at all. This is the approach initially taken in the order reversed in *Bell Atlantic*. However, review of the record and the *Bell Atlantic* decision demonstrates that the Commission can quite comfortably conclude that, consistent with the directions of the Court and with reasoned decision making, delivery of ISP traffic to a CLEC is not subject to the reciprocal compensation provisions of section 251(b)(5) because delivery of Internet-bound traffic to the ISP does not constitute either transport or termination of that traffic. A bill and keep structure can still be made applicable to other local traffic pursuant to the provisions of section 251(b)(5).

- ISP traffic can be treated as subject to 251(b)(5), but still subject to a bill and keep regulatory structure. This conclusion does not require that the Commission abandon its prior analysis that section 252(d)(2) requires that costs be reasonably in balance as a prerequisite to ordering bill and keep as a regulatory requirement. Bill and keep for ISP traffic pursuant to section 252(d)(2) can be ordered simply on the recognition that, in the case of ISP traffic, the originating LEC is not the cost causer in any cognizable economic sense. So long as the structure permits the CLEC to recover its costs from the entity with which such costs are "associated" — the ISP which is its customer — bill and keep would be consistent with the Act.

The Commission could also implement bill and keep for ISP traffic by denying reciprocal compensation for carriers that offer service only to a limited number of customers based on Internet arbitrage, and by forbearing from enforcing the reciprocal compensation pricing rules in section 251(d)(2). While these are discussed in this paper, they are not optimal and we do not recommend that they be adopted.

A LEGAL ROADMAP FOR IMPLEMENTING A BILL AND KEEP RULE FOR ALL WIRELINE TRAFFIC

For several years, the Commission has been wrestling with the problem of "ISP reciprocal compensation" — whether and how the Commission's rules implementing 47 U.S.C. § 251(b)(5) apply to the dial-up connections between Internet service providers ("ISPs") and their subscribers when two or more carriers collaborate to provide such connections. Many parties have sought to exploit the current rules by creating ISP-only carriers that exist primarily to tap into the significant flow of reciprocal compensation payments that these incoming-only customers generate, creating a massive transfer of wealth to these carriers from the ratepayers of the incumbent LECs. The current compensation regime distorts the marketplace, discouraging carriers from building networks to serve the residential customers who initiate these dial-up connections, and rewarding carriers for restricting their services to ISPs exclusively. Under the present rules, incumbent LEC ratepayers subsidize the carriers serving ISPs with hundreds of millions of dollars a year, regardless of whether those ratepayers use the Internet themselves.

The Commission is well aware of these harms, which have been documented in multiple rounds of comments and ex partes over the past four years, and which have spawned extensive debate on Capitol Hill as well. The Commission took a first step toward addressing these problems last year by ruling that ISP dial-up calls transmitted from one LEC to another fall outside section 251(b)(5) because they do not terminate locally with the ISP, *see* Declaratory Ruling and Notice of Proposed Rulemaking, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996: Inter-Carrier Compensation for ISP-Bound Traffic*, 14 FCC Rcd 3689 (1999) ("*Reciprocal Compensation Declaratory Ruling*"). However, the D.C. Circuit vacated and remanded this initial effort because it found that the Commission had not adequately explained its reasoning. *See Bell Atlantic Tel. Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000) ("*Bell Atlantic*").

Qwest understands that the Commission is using this remand as an opportunity to explore comprehensive legal and practical solutions to the question of ISP reciprocal compensation. One solution the Commission reportedly is considering is a "bill and keep" rule for ISP dial-up traffic, or for local and ISP dial-up traffic alike. As Qwest and other parties have demonstrated in their comments and ex parte presentations to the Commission, given the current ESP exemption from carrier access charges, a bill and keep compensation structure represents the economically optimal solution to the problem of ISP reciprocal compensation. The purpose of this paper is to articulate and analyze legal arguments that would support implementation of a bill and keep structure for Internet-bound traffic, either in isolation or together with other kinds of wireline traffic.

I. <u>General Approaches to Implementing Bill and Keep.</u>

A bill and keep rule for Internet-bound traffic could be grounded on one of two sources of authority. If the Commission deems ISP dial-up calls non-local or otherwise outside section 251(b)(5), any intercarrier compensation rule would have to be based on the Commission's general authority under 47 U.S.C. § 201. If, on the other hand, Internet traffic were deemed to be within the ambit of section 251(b)(5), then any bill and keep transport and termination rates for that traffic (or some broader range of traffic encompassed by section 251(b)(5)) would have to be set in accordance with 47 U.S.C. § 252(d)(2). Section 252(d)(2) prevents a state commission from approving a section 251(b)(5) reciprocal compensation arrangement unless the arrangement "provide[s] for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination . . . of calls that originate on the network facilities of the other carrier," with the costs determined "on the basis of a reasonable approximation of the additional costs of terminating such calls." 47 U.S.C. § 252(d)(2)(A)(i), (ii).

While section 252(d)(2) expressly does not "preclude arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements)," *id.* § 252(d)(2)(B)(i), any regulatory regime that imposes bill and keep for out-of-balance traffic will need to address whether the scheme "afford[s]" or "provide[s] for the mutual . . . recovery by each carrier of costs." The Commission suggested in its *Local Competition Order* that some degree of balance generally is necessary, ruling that states may impose mandatory bill and keep arrangements only where traffic between carriers is "roughly balanced." First Report and Order, *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16054-55 ¶¶ 1111-13 (1996) ("*Local Competition Order*"). Of course, the Commission could squarely amend this rule, but ultimately the challenge before the Commission with respect to fashioning a bill and keep regime for ISP traffic will be to ensure that any such regime complies with the principles set forth in the body of section 252 itself. The proposals discussed below lay out ways in which the Commission could proceed.

The very reason the Commission is considering action with respect to ISP dial-up is that the traffic flows between incumbent and competitive carriers *are* out of balance.[1/] Thus, the best way for the Commission to implement bill and keep would be to reaffirm its conclusion that Internet-bound calls do not come within the scope of section 251(b)(5) at all; then, any

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[1/] Whereas the imbalance between ILEC and CLEC traffic flows for Internet-bound calls arises solely as a result of the CLECs' regulatory arbitrage, the asymmetrical traffic flows between wireline and CMRS networks are entirely real, resulting from differences in network costs, pricing, and customer usage preferences. As discussed below, this inherent traffic intercarrier compensation rule adopted for such traffic would not be bound by the limitations of section 252(d)(2). Such an approach would require a thorough analysis of the D.C. Circuit's decision in *Bell Atlantic v. FCC*, but would not otherwise be vulnerable to challenge under the Act. The Commission could then subject some or all of the remaining local traffic to a bill and keep structure pursuant to sections 251(b)(5) and 252(d)(4).

If, on the other hand, the Commission were to modify its earlier conclusion concerning the non-local nature of ISP-bound traffic (or were to revisit its conclusion that 251(b)(5) is limited to local traffic) the Commission could still implement a bill and keep compensation structure under section 251(b)(5). The Commission could find that under ordinary principles of cost causation, the costs of ISP dial-up are "associated," for purposes of section 252(d)(2), with serving the ISP, not its subscribers. Alternatively, the Commission could hold that carriers that have intentionally limited the customers they serve simply to create traffic imbalances are not entitled to "reciprocal" compensation arrangements under section 251(b)(5). Finally, the Commission could decide under its section 10 authority, 47 U.S.C. § 160(a) that it is appropriate to forbear from applying section 252(d)(2) to ISP-bound traffic. Each of these approaches, however, presents its own set of issues that the Commission would have to address before proceeding.

Whichever route the Commission chooses, it clearly has jurisdiction to act. Whatever other concerns the D.C. Circuit had in *Bell Atlantic*, the court expressly reaffirmed the Commission's end-to-end methodology for determining whether traffic comes within its regulatory jurisdiction: "There is no dispute that the Commission has historically been justified in relying on this method when determining whether a particular communication is

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imbalance between wireline and CMRS networks suggests that CMRS traffic should *not* be jurisdictionally interstate." *Bell Atlantic*, 206 F.3d at 5. The D.C. Circuit further acknowledged that, when ISP subscribers dial their ISPs' local modem banks, they do so to initiate communications that most commonly terminate out of state and around the world. *See id.* (in the case of ISP dial-up, "there is some communication taking place between the ISP and out-of-state websites"). Thus, nothing in the D.C. Circuit's opinion displaces the Commission's jurisdiction to prescribe an intercarrier compensation rule for ISP dial-up traffic, whether or not the Commission deems that traffic the subject to section 251(b)(5).[2]

II. Removing ISP Dial-Up from the Scope of Section 251(b)(5).

As noted above, section 252(d)(2) presents a potential obstacle to imposing bill and keep on out-of-balance traffic *only* if that traffic is held to come within the scope of section 251(b)(5). If the Commission reaffirms its conclusion that ISP dial-up traffic falls outside section 251(b)(5) because ISP subscribers' Internet-bound communications do not terminate at the ISP's modem bank, then the Commission simply is not constrained by section 252(d)(2).

A. The D.C. Circuit's Opinion in *Bell Atlantic* Does Not Require That ISP Traffic Be Included in Section 251(b)(5).

The *Bell Atlantic* decision held that the Commission had not sufficiently supported its initial determination that ISP traffic is not subject to section 251(d)(5). However, the D.C. Circuit did not base its objections to the *Reciprocal Compensation Declaratory Ruling* on any fundamental disagreement with the substance of the Commission's decision on the merits. Nor

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included in whatever general bill and keep rule the Commission chooses to adopt.

[2] Moreover, the Commission could assert jurisdiction over the residual portion of Internet-bound traffic reflecting communications with *in-state* web servers by finding that there is no practical way for carriers to monitor the destinations of the individual Internet-bound packets they carry or segregate in-state from interstate traffic. *See Louisiana Public Serv. Comm'n v.*

did the Court hold that ISP traffic is, in fact, subject to section 251(b)(5). Rather, the opinion found that the Commission had not adequately justified its reasoning under the Administrative Procedure Act. The Court left open to the Commission the option to revisit and explain its initial decision, fully contemplating that the Commission could well reach the same conclusions. If the Commission does decide to continue to analyze ISP traffic as subject to section 201 rather than section 251(b)(5), it can address the *Bell Atlantic* decision as follows:

1. There is ample Commission precedent for using an "end-to-end" analysis to determine the substantive classification of services as "local." Despite CLECs' arguments to the contrary, the D.C. Circuit did not forbid the Commission from determining the regulatory classification of a service by examining the endpoints of the larger chain of communication of which that service is a part — the approach traditionally used by the Commission in analyzing a service's jurisdictional classification. Instead, the court simply held that the Commission "*has yet to provide an explanation* why this inquiry is relevant to discerning whether a call to an ISP should fit within the local call model of two collaborating LECs or the long-distance model of a long-distance carrier collaborating with two LECs." *Bell Atlantic*, 206 F.3d at 5 (emphasis added).

The D.C. Circuit's conclusion that the Commission had never applied its end-to-end analysis outside of jurisdictional inquiries is simply incorrect. For nearly a decade, the Commission has examined the entire chain of transmission of which a service is a part (and, in particular, examined where that transmission begins and ends) to determine the applicability of substantive rules that turn on whether the service is truly local or merely transits the local exchange network as part of a long distance call. For example, in *Teleconnect Co. v. Bell Tel.*

FCC, 476 U.S. 355, 375 n.4 (1986). The preponderance of commenters confirmed that fact in

Co., 6 FCC Rcd 5202 (1991), *recon. denied*, 10 FCC Rcd 1626 (1995), the Commission used such an analysis to determine the appropriate application of access charges to calls made with Teleconnect's 800 calling card. The Commission looked at the endpoints of these calls to decide whether they consisted of one continuous communication or two separate ones. In determining that there was only one call, the Commission noted that "the end-to-end nature of the communications [is] more significant than the facilities used to complete such communications," and accordingly considered the calling card calls "from [their] inception to [their] completion." 10 FCC Rcd 6 ¶ 12. The Commission has repeatedly applied the same end-to-end analysis to determine the appropriate application of access charges to resold 800 services, *see* Memorandum Opinion and Order, *International Telecharge, Inc. v. Southwestern Bell Tel. Co.*, 11 FCC Rcd 10061, 10069-70 ¶¶ 21-22 (1996), and to a variety of optional services including call waiting, call forwarding, voice mail storage, and paging. *See* Memorandum Opinion and Order, *AT&T Corp. v. Bell Atlantic-Pennsylvania*, 14 FCC Rcd 556, 578-79 ¶ 47 (1998).[3]

The Commission did not cite these precedents in its *Reciprocal Compensation Declaratory Ruling* or its briefs to the D.C. Circuit. A careful explication of these precedents on remand would establish that the use of an end-to-end analysis to exclude Internet-based traffic

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response to the Commission's April 27, 1999 NPRM in this docket.

[3] The Commission has applied an end-to-end analysis to resolve substantive issues in contexts other than access charges as well. In *Request by RCN Telecom Services and Bell Atlantic for Clarification of Bell Atlantic's Authority to Carry Local Traffic Between Exchanges on Behalf of Competitive Local Exchange Carriers*, 14 FCC Rcd 13861 (1999), RCN Telecom and Bell Atlantic petitioned the Commission for a determination of whether section 271 permits Bell Atlantic to transport RCN's calls between two points within Bell Atlantic's local calling area, even though RCN's point of interconnection is located outside of Bell Atlantic's local calling area. In holding that Bell Atlantic could transport such calls, the Commission again focused on "the end-to-end nature of the communication[]," stating that it could "find no reason for why RCN traffic that *begins and ends* within BA's local calling area cannot pass through an interconnection point outside of the BOC's local calling area." 14 FCC Rcd at 13866 ¶ 13 (emphasis added).

from section 251(b)(5) in fact comports with longstanding agency practice, and that it would have been error *not* to apply an end-to-end analysis here.

2. *Internet-bound dial up traffic does not "terminate" at the ISP's modem bank within the meaning of the Commission's rules.* The Commission's second error, according to the D.C. Circuit, was its failure "to apply, or even to mention, its definition of 'termination,' namely 'the switching of traffic that is subject to section 251(b)(5) at the terminating carrier's end office switch (or equivalent facility) and delivery of that traffic from that switch to the called party's premises." *Bell Atlantic*, 206 F.3d at 6 (quoting 47 C.F.R. § 51.701(d)). Again, the Commission can easily correct any failure of explanation on remand.

First, it appears that the D.C. Circuit misread 47 C.F.R. § 51.701(d), the Commission definition of "termination" in question. On its face, that rule is not intended to define the local traffic subject to section 251(b)(5); rather, it applies only *after* the traffic has been determined by the Commission based on *other* rules to be "subject to section 251(b)(5)." 47 C.F.R. § 51.701(d). The point of the Commission's rule is simply to classify the universe of section 251(b)(5) traffic as one of two services: "termination" as opposed to "transport." *See* 47 C.F.R. § 51.701(c) (complementary definition of "transport"). The Commission was correct to consider this rule irrelevant; should it choose to reaffirm this conclusion, it need only explain why.

Second, ample Commission precedent confirms the technical reality that ISP's local modem bank is not the "called party" that the ISP subscriber ultimately aims to reach, and hence the call does not "terminate" with the ISP under any permissible reading of that word. The Commission has consistently defined the "called party" in terms of the caller's intention, and it has ruled multiple times that when a caller first dials a "local" telephone number to reach an intermediate platform before directing his call to its final destination, the intermediate platform is not a "called party." *See, e.g., Teleconnect Co. v. Bell Tel. Co.,* 10 FCC Rcd 1626, 1627, 1630 ¶¶ 5, 14 (1995) (long distance platform reached through an 800 number); Memorandum Opinion and Order, *Petition for Emergency Relief and Declaratory Ruling Filed by the BellSouth Corp.*, 7 FCC Rcd 1619, 1620, 1621 ¶¶ 9, 11 (1992) (voice mail); *cf. Local Competition Order*, 11 FCC Rcd at 15935 n.2091 (discussing operation of Feature Group A).[4] An ISP subscriber does not dial a local telephone number because he wants to speak to the ISP's modem bank; rather, he does so to connect to the servers *beyond* that modem bank, that contain the content of the Internet.

3. ISPs are fundamentally different from businesses that use the telephone just as part of their operations. The D.C. Circuit noted that the Commission "ha[d] not satisfactorily explained why an ISP is not . . . simply a communications-intensive business end user selling a product to consumer and other business end users." *Bell Atlantic*, 206 F.3d at 7 (internal quotation marks omitted). Again, the court held only that the Commission had not *explained* the difference between an ISP and a pizza-delivery firm, not that it *could* not provide such an explanation. The Commission has since articulated the missing explanation (indeed, to the same court that decided *Bell Atlantic*, and to two of the same three judges) in its recent brief defending the *Advanced Services Remand Order*:

> Moreover, ISP-bound traffic differs decisively from calls to other businesses that use telecommunications, such as "pizza delivery firms, travel reservation

[4] The D.C. Circuit suggested that the *Teleconnect* and *BellSouth* precedents might not apply because ISPs provide "information services," *see Bell Atlantic*, 206 F.3d at 6, but this concern is misplaced. The Commission has applied this same understanding of where communications begin and end to ESP services, of which ISP services are simply a subset. As the Commission has explained, a call to an ESP is an "interstate call[] which *transit[s the ESP's] location*" on the way to its final destination. Memorandum Opinion and Order, *MTS and WATS Market Structure,* 97 F.C.C.2d 682, 711-12 ¶ 78 (1983) (emphasis added). Even if an ESP "might terminate a few calls at its own location," the Commission recognized, most of the calls it receives will "transit its location" and continue on to interstate destinations. *Id.* at 712 ¶ 78.